Engrossed bill to be entitled An Act to provide for the payment of criminal prosecutions and for other purposes;

Was read the third time, and upon the question of its passage, the vote was:

Yeas—Mr. President, Messrs. Brinson, Cone, Crigler, Eppes, Filor, Gillis, Hawes, Hopkins, Kilcrease, Long, Myrick, Nicholson, Provence, Smith, Tracy and Wynn—17.

Nays—None.

So the bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

Engrossed bill to be entitled, An act to grant Pre-emptions on School Lands;

Was read the third time, upon the question of its passage, the vote was:

Yeas—Mr. President, Messrs. Brinson, Cone, Crigler, Eppes, Filor, Gillis, Hawes, Hopkins, Kilcrease, Long, Myrick, Nicholson, Provence, Smith, Tracy and Wynn—17

Nays—None.

So said bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

Engrossed bill to be entitled An act to amend An act entitled An act to incorporate the Jacksonville and Alligator Plank Road Company;

Was read the third time, and upon the question of its passage, the vote was:

Yeas—Mr. President, Messrs. Brinson, Cone, Crigler, Filor, Gillis, Hawes, Hopkins, Kilcrease, Myrick, Nicholson, Provence, Smith, Tracy and Wynn—15.

Nays—None.

So the bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

A bill to be entitled An act to prevent the reduction of two pounds of Cotton per bale;

Was read the first time, the rule waived, read the second time, and on motion, was laid on the table.

A bill to be entitled An act to incorporate a Bank in the city of Tallahassee;

Came up on its first reading, the rule waived and the bill read a first and second time by its title, and ordered that 75 copies thereof be printed for the use of the Senate.

A bill to be entitled An act to change the mode of compensating the several Solicitors or Prosecuting Attorneys in this State;

Was read the first time, the rule waived, read the second time by its title, and on motion, referred to the Committee on the Judiciary.

A bill to be entitled An act to incorporate the Lagoon and Perdido Canal Company;

Came up on its second reading, when on motion of Mr. Eppes, said bill was laid on the table, and ordered that 75 copies of said bill together with the report of the Committee on Corporations to whom it was referred, be printed for the use of the Senate.

House bill to be entitled An act to authorize and empower Andrew J. Lea, administrator, to sell certain Real Estate therein specified;

Was read the second time, when on motion said bill was referred to the Committee on the Judiciary.

A bill to be entitled, An act to authorize Charles H. Longworth, a minor, to assume the management of his own estate;

Came up on its second reading.

On motion, the Senate went into Committee of the Whole upon said bill, Mr. Tracy in the Chair.

After some time spent therein, the Committee rose, and through their Chairman reported the bill back to the Senate as amended, and asked to be discharged from the further consideration of the subject.

Which report was concurred in, and the bill as amended read the second time, and ordered to be Engrossed for a third reading on to-morrow.

On motion,

The Senate adjourned until to-morrow morning, 10 o'clock.

WEDNESDAY, December 20, 1854.

The Senate met pursuant to adjournment.

The Rev. Mr. Turner officiated as Chaplain.

A quorum being present the Journal of yesterday was read and approevd.

The following Enrolled Bill and Resolution which had passed both Houses of the General Assembly, and signed by the presiding Officers thereof, were transmitted for approval to his Excellancy the Governor, viz:

An Act for the relief of John B. Anderson of Jackson County;

A Resolution for payment of the Board of Internal Improvement.

The following Bills which had passed the Senate were transmitted to the House of Representatives, viz:

A Bill to be entitled, An Act to provide for the payment of the expenses of Criminal Prosecutions and for other purposes.

A Bill to be entitled, An Act to grant pre-emptions on School Lands.

A Bill to be entitled, An Act to amend an Act entitled an Act to Incorporate the Jacksonville ahd Alligator Plank Road Company.

On motion the rule was waived, and Mr. Smith permitted, without previous notice, to introduce a Bill to be entitled, An Act to author-

ize the Comptroller to audit and settle the claim of David P. Hogue for services rendered the State;

Which Bill was placed among the Orders of the Day.

On motion of Mr. Tracy, the Committee on Taxation and Revenue was instructed to enquire into the expediency of lessening the Tax on Saw Mills and other Manufactures in this State.

Mr. Hopkins presented a memorial from the President and Directors of the Jacksonville and Alligator Plank Road Company;

Which was read, and on motion, referred to the Committee on Corporations.

Mr. Long, from the Committee on the Judiciary, made the following Report:

The Judiciary Committee to whom was referred a Bill to be entitled, An Act to amend an Act to provide for the payment of Jurors and State Witnesses, approved January 8, 1848, have considered the same and recommend its passage.

Respectfully submitted,

M. A. LONG,
Chairman.

Which was read and the Bill placed among the Orders of the Day.

Mr. Filor, from the Committee on Engrossed Bills, made the following Report:

The Committee on Engrossed Bills beg leave to Report the following Bills as correctly engrossed:

A Bill to be entitled, An Act to Improve the Navigation of the Harbor and Bay of Apalachicola.

A Bill to be entitled, An Act to empower Charles H. Longworth of Gadsden County, to manage his own estate.

Respectfully submitted,

JAMES FILOR,
Chairman.

Which was read and the Bills placed among the Orders of the Day.

Mr. Myrick, from a Select Committee, made the following report:

The Select Committee to whom was referred a Bill to be entitled, An Act to regulate the Performance of the duties of the Supreme Court of this State, and for other purposes, through their Chairman

REPORT:

That they have had the Bill under consideration, and recommend that the Bill do not pass.

JNO. T. MYRICK,
Chairman.

Which was read and the Bill placed among the Orders of the Day.

Also the following minority Report:

A Minority of said Committee, however, think that the Bill ought to pass, and beg leave to give their reasons therefor, and ask that the same be spread on the Journal of the Senate:

1st. The only valid objection that can, in the opinion of the Minority Committee, exist, may be found in the Constitutionality of the question. To that end, we annex the opinion of Counsel eminent in the profession of the Law, which is satisfactory to our minds, and clearly shows that it is in the power of the Legislature to repeal or otherwise regulate the Performances of said Court.

2d. The matter of expense is one of no small importance to the people of Florida. Upon an examination of the expenses arising from the present system of the Supreme Court, we find they amount to the sum of $8,000, the Salaries to $6,000, amounting in the whole to one-eighth of the entire expenses of the State of Florida. When we take into consideration our ability to pay, manner of payment and subjects of taxation, &c.,and find the fact staring us in the face that the Bill now proposed and offered, as we honestly think, is calculated in every respect better to carry out and promote the ends of Justice than by the present and existing Supreme Court, and save, as it does, to the Treasury the large amount of money shown to be annually expended, is a consideration worthy of our most serious attention.

3d. And to this end, being fully convinced that the change proposed by the Bill herein provided, fully and to all purposes enables the ends of Justice to be carried out, we most respectfully ask that the Bill be passed.

JNO. T. MYRICIK, Chairman.
E. D. TRACY.

The Constitutional power of the General Assembly to repeal the Act organizing the present Supreme Court, cannot be well questioned. Doubts may be entertained of the expediency or propriety of abandoning the present system and returning to that upon which we set out in our career of self-government, (though to the undersigned it appears clear that both expediency and propriety require the proposed repeal of the Act referred to,) but with regard to the Constitutional right of the General Assembly to repeal the Act, it is believed no rational or well grounded doubt can exist.

The Third Section of the Fifth Article of the Constitution is in these words, viz: "For the term of five years from the election of the Judges of the Circuit Courts, and thereafter until the *General Assembly* shall otherwise provide, the powers of the Supreme Court shall be vested in, and its duties performed by, the Judges of the several Circuit Courts within this State," &c.

The Judges of the Circuit Court were thus made for a limited period, certainly, Judges of the Supreme Court. They continued to exercise the powers and perform the duties thus conferred and re-

quired, until the passage of the Act entitled "An Act to Organize the Supreme Court of the State of Florida," approved January 11, 1851. But before this Act was passed, the Constitution was amended by an Act passed at two successive Sessions, in 1847 and 1848, by which it was provided that the Judges of the Supreme Court and the Judges of the Circuit Courts should be elected for the term of eight years, at the expiration of the term of office of the Judges of the Circuit Courts. The object of this change was simply to make the office of Judge, instead of a life tenure, merely one for a term of years.

Justices of the Supreme Court, Chancellors and Judges of the Circuit Courts were at this time elected by the concurrent vote of a majority of both Houses of the General Assembly. Such was the requirement of the Eleventh Clause of the Fifth Article of the Constitution.

Subsequently, an Act was passed to amend the Eleventh Clause of this Fifth Article, and also amendatory of the Act passed in 1847 and 1848, so as to give the election of Judges to the people. This Act was first passed in December, 1850, and provided for the election of the Circuit Judges by the people, which Judges still, however, constituted or composed the Supreme Court. The Act further provided that whenever the General Assembly should "create," (such is the term,) a separate Supreme Court, the Judges thereof should also be elected by the people, with this difference, that such Judges should be elected by general ticket.

Then came the Act to organize the Supreme Court, approved, as before remarked, January 11, 1851. This was simply an ordinary Act of the Legislature, and was nothing more nor less than an exercise of the power, derived from the Constitution, to organize a separate Supreme Court. The Constitution, as it originally stood, never meant that, when the General Assembly chose to exercise this power, the Court which they might organize should continue to be the Court even though the Legislature should determine to undo what they had done, or disorganize what they had organized. The framers of the Constitution meant nothing more nor less than this, that certain Judges should compose the Supreme Court for five years, and thereafter until what? Not until there should be a change in the Constition, but merely until by a single Legislative Act—by an Act passed at one Session merely—there should be a new organization. And this Act, like all other Acts of the General Assembly, is subject to alteration, amendment or repeal. Accordingly, we find there was but the Act of a single Session called into requisition to organize the present Supreme Court. The Judges thereof hold their offices under that organization, and under none other.

Suppose the Third Clause of the Fifth Article of the Constitution had never been changed, but the General Assembly had seen fit, at the expiration of the first five years of State Government, to organ-

ize a separate Supreme Court, such as they did organize: could not the General Assembly have repealed that Act of organization, and have adopted another? By looking at the Clause referred to, it will be seen that it is left to the Legislature to provide otherwise or not; it is left to the Legislature, not acting as a Convention of the people, "otherwise to provide," but to that body as a Legislature, "to provide otherwise," by an ordinary act of legislation, for a separate Supreme Court. The present organization, then, does not derive its existence from an act of Constitutional solemnity, but from a simple act of ordinary legislation, calling it into existence, and consequently, like all other legal enactments, subject to alteration, modification or repeal.

Let it be borne in mind, too, that the Supreme Court called into existence by the Act referred to, did, at its first Session, solemnly determine, after argument by members of the Bar, that the Legislature had not, even by that Act, *completely* otherwise provided; but on the contrary, had retained the Judges of the Circuit Court as Justices of the Supreme Court, whenever their services might be required.

The various amendments that have been made of the Constitution, do not in the least impair the force of this argument, or weaken the view here presented. On the contrary, they support and strengthen it. The amendment adopted in 1850, and in 1852–'3, giving the election of Judges to the people, in its third Section uses this language: "That whenever the General Assembly shall *create* a separate Supreme Court, &c., under the provisions of this Constitution." Under what provisions, and under what Constitution? Manifestly under the provisions of the Constitution, or the third clause thereof, giving complete power over the whole subject to the Legislature as such. It will be observed that the language is, when the General Assembly shall "*create.*" This is the language of the Constitution as it now stands. Surely it will not be contended that the power which creates cannot uncreate, or destroy. Had the General Assembly by two Acts of successive Legislatures, in the mode prescribed for altering the Constitution, organized or established a separate Supreme Court, composed of Judges other than the Judges of the Circuit Courts, the case would have been different. The Constitution then would have been entirely changed in respect to the composition of the Supreme Court, and two successive Acts would have been necessary to undo what had been so done. But the General Assembly have not done so, nor was it necessary to do so. They were authorized by a single Act to prescribe who should be Judges of the Supreme Court, and by a single Act they did so. This Legislature has, under the Constitution, the same power and the same right to prescribe how the Supreme Court shall be constituted, and of what Judges it shall be composed, and can repeal, alter or modify what their predecessors, as a Legislature, have done, if deemed expedient so to do.

Which was read.

On motion of Mr. Myrick, 75 copies of the Bill and Reports of majority and minority, together with the opinion of Counsel, were ordered to be printed for the use of the Senate.

On motion the rule was waived, and a Bill to be entitled, An Act to change the time of holding the Circuit Court in Calhoun County, was taken from the table and placed among the Orders of the Day.

The following message was received from the House of Representatives:

HOUSE OF REPRESENTATIVES,
December 19, 1854.

Hon. President of the Senate:

SIR:—The following Bills have passed the House, viz:

Senate bill to be entitled An act to establish a Ferry at Brown's Ferry, in Jackson County, without amendment;

Senate bill to be entitled An act to allow the Supreme and Circuit Courts of this State to hold extra terms whenever the regular terms cannot be safely held, in consequence of the prevalence of any contagious disease at the time and place, or places, appointed by law for holding the regular terms, without amendment;

Senate bill to be entitled An act in relation to Evidence, without amendment;

Senate bill to be entitled An act to repeal section 4 of an act amendatory of an act entitled An act to establish and organize a Mayor's Court for the City of Apalachicola, approved January 5th, 1853, without amendment;

A bill to be entitled An act to organize the County of Volusia;

A bill to be entitled An act to authorize Oliver H. Hearn to build a Toll Bridge across the Ocilla River;

A bill to be entitled An act for the relief of the Town of Quincy;

A bill to be entitled An act to permanently locate the Court House of Hernando County; and

A bill to be entitled An act making additional appropriations to defray the expenses of Criminal Prosecutions, and for the payment of Jurors and State Witnesses, for the fiscal years 1853 and 1854.

Seventy-five copies of the following bills have been ordered to be printed, viz:

A bill to be entitled An act authorizing County Commissioners to grant license to retail Spirituous and Vinous Liquors, and for other purposes;

A bill to be entitled An act to incorporate the Palatka and Micanopy Plank Road Company; and

A bill to be entitled An act granting certain lands to the Palatka and Micanopy Plank Road Company.

Very respectfully,

HUGH A. CORLEY,
Clerk Ho. Reps.

Which was read.

The Senate Bills were ordered to be enrolled and House Bills placed among the Orders of the Day.

ORDERS OF THE DAY.

A Bill to be entitled, An Act to prevent white persons from gaming with negroes and other persons of color;

Was read a second time, and ordered to be engrossed for a third reading on to-morrow.

Resolution in regard to Mail Route from Tallahassee via Sopchoppy to White Bluff or Pickettsville, at the mouth of Crooked River on the Apalachicola Bay;

Was read the second time and ordered to be engrossed for a third reading on to-morrow.

Resolution in relation to the Improvement of the St. Johns Bar and the preservation of the site of St. Johns Light House;

Was read a second time and ordered to be engrossed for a third reading on to-morrow.

A Bill to be entitled, An Act to authorize the Comptroller to audit and settle the Claim of David P. Hogue, for services rendered the State;

Was read the first time, the rule waived, read a second time by its title, and referred to the Committee on Claims and Accounts.

House Bill to be entitled, An Act to amend an Act entitled an Act to provide for the payment of Jurors and State Witnesses, approved January 8, 1848;

Was read the third time, and upon the question of its passage, the vote was:

Yeas—Mr. President, Messrs. Bird, Brinson, Cone, Criglar, Eppes, Filor, Gillis, Hawes, Hopkins, Long, Myrick, Nicholson, Smith, Tracy and Wynn—16.

Nays—None.

So the Bill passed, title as stated.

Ordered that the same be certified to the House of Representatives.

Engrossed Bill to be entitled, An Act to authorize Charles H. Longworth, of Gadsden County, a minor, to assume the management of his own estate;

Was read the third time, and upon the question of its passage, the vote was:

Yeas—Mr. President, Messrs. Bird, Brinson, Cone, Criglar, Eppes, Filor, Gillis, Hawes, Hopkins, Kilcrease, Long, Myrick, Nicholson, Provence, Smith, Tracy and Wynn—17.

Nays—None.

So the Bill passed, title as stated.

Ordered that the same be certified to the House of Representatives.

Engrossed Bill to be entitled, An Act to Improve the Navigation of the Harbor and Bay of Apalachicola;

Was read the third time, and upon the question of its passage, th vote was:

Yeas—Mr. President, Messrs. Bird, Brinson, Cone, Criglar, Eppes, Filor, Gillis, Hawes, Hopkins, Long, Myrick, Nicholson, Provence, Smith, Tracy and Wynn—17.

Nays—None.

So the Bill passed, title as stated.

Ordered that the same be certified to the House of Representatives.

House Bill to be entitled, An Act to authorize Oliver H. Hearn to build a Toll Bridge across the Ocilla River;

Was read a first time, and ordered for a second reading on tomorrow.

House Bill to be entitled, An Act to organize the County of Volusia;

Was read the first time, and ordered for a second reading on tomorrow.

House Bill to be entitled, An Act making additional appropriation to defray the expenses of Criminal prosecutions, and for the payment of Jurors and State Witnesses, for the fiscal years 1853 and 1854;

Was read the first time, and on motion of Mr. Tracy was laid on the table.

House Bill to be entitled, An Act to permanently locate the Court House of Hernando County;

Was read the first time, and ordered for a second reading on tomorrow.

House bill to be entitled An Act for the relief of the Town of Quincy;

Was read the first time and ordered for a second reading on tomorrow.

On motion the rule was waived, and the following message from the House taken from the table:

HOUSE OF REPRESENTATIVES,
December 20, 1854.

Hon. President of the Senate:

SIR—The House has passed enclosed bill to be entitled An Act to amend the act incorporating the City of St. Augustine, approved February 4th, 1833.

Very respectfully,
HUGH A. CORLEY,
Clerk House of Representatives.

Which was read, and the bill placed among the orders of the day.

A bill to be entitled An Act to change the time of holding the Circuit Court in Calhoun County;

Was read the second time, the rule waived, read the third time, and upon the question of its passage the vote was:

Yeas—Mr. President, Messrs. Bird, Brinson, Cone, Criglar, Eppes, Filor, Gillis, Hawes, Hopkins, Kilcrease, Long, Myrick, Nicholson, Smith, Tracy and Wynn—17.

Nays—None.

So the bill passed, title as stated.

Ordered that the same be certified to the House of Representatives.

House bill to be entitled An Act to amend an act amendatory of the act to incorporate the City of St. Augustine, approved 4th February, 1833;

Was read the first time by its title, the rule waived, read a second time by its title, and on motion of Mr. Provence, the Senate went into Committee of the Whole on said bill, Mr. Myrick in the chair.

After some time spent therein, the Committee rose, and through their chairman reported the bill back to the Senate with amendments, and asked to be discharged from the further consideration of the same.

Which was concurred in, and the amendments adopted.

On motion, the Rule was waived, and the bill read the third time as amended and upon the question of its passage the vote was:

Yeas—Mr. President, Messrs. Bird, Brinson, Cone, Criglar, Eppes, Filor, Gillis, Hawes, Hopkins, Long, Myrick, Nicholson, Provence, Smith, Tracy and Wynn—17.

Nays—None.

So the bill passed as amended.

Ordered that the Secretary inform the House of Representatives of the several amendments, and ask the concurrence of the House in the same.

The following message was received from his Excellency the Governor:

EXECUTIVE CHAMBER,
TALLAHASSEE, December 20, 1854.

Hon. H. V. SNELL,
President of the Senate:

SIR:—I respectfully nominate Herrod K. Doles, as Auctioneer in and for the County of Calhoun.

JAMES E. BROOME.

Which was read, and the nomination therein made, was advised and consented to.

Also the following:

EXECUTIVE CHAMBER,
TALLAHASSEE, December 16, 1854.

Fellow-Citizens of the Senate
and House of Representatives:

The suit which has been pending for some years in the Supreme Court of the United States, between the States of Georgia and Florida, to settle definitely the Boundary Line between the two States, has not yet been decided. At the last Term of the Court, an interlocutory decree was obtained, on the application of both parties,

raising a Commission, to be composed of one Commissioner and one Surveyor on the part of each State, and to be named by the States respectively. They were required, "First, To run and mark a line from the confluence of the Flint and Chattahoochee Rivers to the Eastern terminus alleged by the complainant to have been determined by Ellicott and Minor, as Commissioners on the part of the United States and Spain, under the Treaty of San Lorenzo el Real; Second, If they shall find such terminus not to be the true head or source of the St. Marys River, then to run and mark another line, from the confluence of the Flint and Chattahoochee, to the point which they shall ascertain to have been, at the date of the Treaty, such true head or source," &c. A copy of the interlocutory decree is herewith communicated, marked A. This interlocutory decree was, by the counsel of the respective States, and with the consent of Governor Johnson and myself, so far modified as to permit the work to begin at the point indicated by Ellicott and Minor as the head or source of the River. This was done with the hope that an actual examination would lead to a concurrence of opinion on the part of the Commissioners, and possibly save the expense of running one of the lines authorized by the Court. A copy of that modification is herewith communicated, marked B. The investigations, Surveys, Maps, &c., to be made by this Commission, were considered very important, and as no Session of the Legislature was to take place between the date of the decree and the time which it fixed for completing the work, filing the Reports, &c., I represented the State, under the Act approved December the 24th, 1850, by naming Col. Benjamin F. Whitner as the Commissioner, and Benjamin F. Whitner, Jr., as the Surveyor on the part of this State.

These gentlemen entered upon the discharge of the duties assigned them under circumstances of the most trying character, endangering health and life, and with a perseverence and ability worthy of better results, continued in the field until the work was arrested by the withdrawal of the Commissioner and Surveyor named by His Excellency the Governor of Georgia. For more particular information on this point, you are respectfully referred to the letter of His Excellency Governor Johnson, dated September the 14th, 1854, marked C., to my letter in reply dated September the 20th, 1854, marked D., and to the report of Col. Benjamin F. Whitner, dated September 18th, 1854, marked E., copies of which accompany this communication. In addition to these, you are respectfully referred to another communication of Col. Whitner, dated December the 8th, 1854, marked F., embracing a statement of expenses, and calling my attention to the subject of compensation. This is accompanied by an extract of a letter addressed by him to Major Allen, the Commissioner on the part of Georgia, dated September 25th, 1854, which will show the character of the services performed by the Surveyor on the part of Florida.

On the subject of compensation, I agreed with the Commissioner

that the usual and even liberal compensation would be allowed, in consequence of the unpropitious season of the year, and the necessity for pressing the work forward to an early completion. On the same subject, I addressed a communication to the Surveyor, dated July the 8th, 1854, a copy of which is herewith transmitted, marked G., to which you are respectfully referred. The gentleman who had been selected by the United States to run the line between Alabama and Florida, was selected by me to run this line, and I stipulated that his compensation should have reference to the compensation received for that service. This I considered proper, because the United Sates, as the proprietor of the land on the whole route, would be expected, of course, to refund the expenses of the survey, and if they were made to conform to their own contract on the Alabama line, no difference could arise on that point.

Towards defraying the expenses of the Commission, procuring the outfit, &c., I advanced from the Contingent Fund nine hundred dollars, and now respectfully recommend an early appropriation, to cover such amounts as may be properly due, and remaining unpaid, on account of expenses and compensation to the Commissioner and Surveyor.

JAMES E. BROOME.

DOCUMENTS REFERRED TO.

[A. & B.]

STATE OF FLORIDA, vs. STATE OF GEORGIA. } SUPREME COURT OF THE UNITED STATES, December Term, 1853. In Equity.

On consideration of the application of the Counsel of both the Complainant and the Defendant in this Cause, it is now here Ordered and Decreed by this Court, that a Commissioner and Surveyor be named by each of the parties, whose duty it shall be:

1st. To run and mark a line from the Flint and Chattahoochee Rivers to the Eastern terminus alleged by the Complainant to have been determined by Ellicott and Minor, as Commissioners on the part of the United States and Spain, under the Treaty of San Lorenzo el Real.

2d. If they shall find such terminus not to be the true head or source of the St. Marys River, then to run and mark another line, from the confluence of the Flint and Chattahoochee to the point which they shall ascertain to have been, at the date of the Treaty, such true head or source.

3d. That a Report by the said Commissioners of their proceedings and observations, together with such Plats as may be necessary to the understanding of their Survey, be made and filed with the Clerk of this Court, on or before the first Monday of November next; and that this Cause be, and the same is hereby set down for hearing on

the second Monday of December next, on all the points arising on the Pleadings and Evidence, without holding either party to be bound or prejudiced in respect thereto by anything in this Interlocutory Decree contained.

(Attest,) WM. THOS. CARROLL,
C. S. C. U. S.

January 4th, 1854.

[*Copy of Agreement in the above Cause—May*, 1854.]

By and with the consent of the Governors of Florida and Georgia, the undersigned, Solicitors for the parties respectively, have agreed as follows:

1st. The Commissioners and Surveyors, in the execution of the Interlocutory Order of the Court, may begin by examining the point alleged to have been determined, by Ellicott and Minor, as the head or source of the St. Marys River. If they find that to be the true head or source, then they shall run a line from thence to the confluence of the Flint and Chattahoochee.

2d. If they find that not to be the true head or source of the St. Marys River, then they are to search for such head or source, and having ascertained and determined the same, they shall run a line from thence to the confluence of the Flint and Chattahoochee.

3d. The undersigned consent to waive all objections to any departure from the terms of the Interlocutory Order which shall be consistent with the terms of this Agreement.

(Signed) M. D. PAPY,
Attorney General of Florida, for himself, and
REVERDY JOHNSON,
Solicitors for Complainant.
JOHN McPHERSON BERRIEN,
for himself, and
GEO. E. BADGER,
Solicitors for Defendant.

[C.]

EXECUTIVE DEPARTMENT,
MILLEDGEVILLE, GEO., September 14th, 1854.

His Excellency Gov. BROOME, Tallahassee, Fla.

DEAR SIR:—I am advised by Major Allen, the Commissioner on the part of Georgia, that he and Col. Whitner, the Florida Commissioner, differ in opinion as to the true "Head or source of the St. Mary's River." The former believes Lake Randolph, and the latter that the point designated by Ellicott and Minor, is the true "head or source." They are now engaged, as you are doubtless apprised, in running the line from the point designated by Ellicott and Minor

to the Western terminus. Thus differing, Maj. Allen, by my direction, in accordance with what I thought and still think is the fair interpretation of the original interlocutory decree and its modification by consent of the parties, has proposed to Col. Whitner to unite in running a line also from Lake Randolph to the Western terminus, in order that the Court may have both surveys before them, and the respective views and arguments of the two Commissioners, as to the points for which they severally contend as the true head or source of the St. Mary's. Col. Whitner declines to unite in such survey, upon the ground that he does not think he finds any "authority either in the original or modified decretal order," requiring him to do so. This state of things is much to be regretted, as it may result in the utter defeat of the object designed by the Court in ordering the survey to be made, and the delay of settling a question which it is so desirable should be finally determined. With great respect for him and his opinions, I must be permitted to differ with him.

The construction of the decretal order, and its modification as understood by me and the Counsel in behalf of Georgia, is briefly this. I beg you to refer to the papers. You will see that the Court evidently intended that *a single* line should be run *only* in the event that the two Commissioners *should agree* that the *point designated by Ellicott and Minor*, is the true "*Head or source of the St. Mary's River.*" Nor is this contradicted or contravend by the agreement which modifies the original order. The original order in the event the Commissioners find the point determined by Ellicott and Minor not to be the true "Head or source," directs a second line to be run. They do not find it to be the true "Head or source," because they do not concur in the opinion that it is so. Therefore the second line is to be run. This intention is still more clearly and affirmatively disclosed by the agreement which modifies the interlocutory decree. That requires them to examine the point "alleged to have been determined by Ellicott and Minor, as the true head or source of the St. Mary's River." "If they find that to be the true head or source of the St. Mary's River, then they shall run a line from thence to the confluence of the Flint and Chattahoochee." If they do not find it to be the true head or source (and they must agree in opinion to do so) then they are to search for "such head or source, and having ascertained and determined the same, they shall run a line from thence," &c., &c. I thus call your attention to this construction in the confident belief that you will concur with me, that not agreeing, that the point determined by Ellicott and Minor is the true head or source, it is the duty of the Florida Commissioner to do something more—to unite with the Georgia Commissioner, at least, in a search for the true head or source.

I present to your Excellency one other view. If the commission adhere strictly to the mere *letter* of the order of the Court, it will necessarily lead to an abandonment of the survey. The Court evi-

dently contemplated that the Commissioners could or would *agree*, as to the true head or source of the St. Mary's, and without such agreement they would not be authorized to run any line whatever. But I have been, and am still disposed to waive this objection, provided, that by *express agreement* the Florida Commissioner will unite in running the line from Lake Randolph. I am willing to carry into effect the true meant *spirit* of the decretal order and modifying agreement, seeing that in consequence of an unanticipated disagreement between the two Commissioners, it cannot be executed to the *letter*. It is for the purpose of exhibiting to your Excellency my great anxiety for the termination of this unpleasant controversy, that I trouble you with so explicit and elaborate a statement of my construction of the authority under which the survey is progressing. But notwithstanding such anxiety, I shall feel constrained to instruct the Surveyor and Commissioner on the part of Georgia, to retire at once from the work, unless your Commissioner will unite in running the proposed line from Lake Randolph. And as preliminary to this, this mail will bear to the Georgia Commissioner instructions to *suspend*, until the Florida Commissioner, under your instructions, shall agree or refuse to unite in such survey, and upon his *refusal* he, the Georgia Commissioner, will be instructed immediately to withdraw from the work.

I beg your Excellency not to misapprehend the spirit of this determination. It is neither designed to produce delay, nor to operate as a menace to Florida. It is simply to prevent the incurring of any additional expense in the execution of a survey which will be perfectly nugatory, if the Commissioner on the part of Florida perseveres in his present determination. I say nugatory, because according to the letter of the decretal order and the agreement which modifies it, no line is of value which is not run from a point, *admitted* by both Commissioners to be the true head or source of the St. Mary's.

You might here ask, why then insist on running the Lake Randolph line, when they do not concur in the opinion that *that* is the true head or source of the St. Mary's? I reply thus. It seems there is no hope of the two Commissioners agreeing on this point, and according to the *letter* of the *order* of the Court, a line run from neither of the points contended for would be regarded as necessarily binding upon either party. The two Commissioners are divided, as the two States have always been—the one contending for the Eastern terminus, as designated by Ellicott and Minor, and the other for Lake Randolph. Hence, it would seem, that one or the other of these is the true head or source of the St. Mary's. By running a line from both points to the Western terminus, the *spirit* of the decretal order will have been executed, and the Court will have before them the report of the two Commissioners each embodying the views, arguments, surveys, observations, measurements and testimonies, by

which they may finally decree in favor of the one or the other point. Looking at the subject thus, I am impressed with the belief that the interest of both States will be promoted by the two Commissioners concurring in all surveys, which in the opinion of either will elucidate the point in controversy.

For the purpose of showing your Excellency the spirit with which the survey was begun on the part of Georgia, I copy an extract from my letter of instructions to the Georgia Commissioner under date of June 1st, 1854.

"It may happen that you and your Florida co-laborers may differ in some points, *especially* that of the true head or source of the St. Mary's. It is hoped that such will not be the case; but in all such cases you will co-operate in all such Surveys, measurments, explorations, &c., as they may desire to make, and I doubt not they will cheerfully reciprocate the courtesy. In this way you cannot differ as to facts of mathematical calculations, however you may differ as to your deductions from them. Where you agree, let it be so stated distinctly; where you may differ, fortify yourself with all the facts on which your conclusions may be based. This is especially important in relation to the true head or source of the St. Mary's; for that, at last, is the great point of controversy between the two States, and the real object of the Survey is to furnish authentic facts to the Court, to enable them to decree finally and correctly in the premises." While this evinces the spirit which animates Georgia, it shows also that the construction of the decretal order herein presented is no after thought.

Hoping that your Excellency's views may accord with my own, and that you will instruct your Commissioner to unite in the Survey of the Lake Randolph line, I have nothing to add but the assurances of high consideration and respect with which

I am, truly, your obedient servant,

HERSCHEL V. JOHNSON.

[D]

EXECUTIVE CHAMBER,
TALLAHASSEE, FLA., Sept. 20, 1854.

His Excellency HERSCHEL V. JOHNSON,

Milledgeville, Georgia,

Sir:—Your communication of the 14th inst., respecting the Boundary Commission now employed in surveying a line from a point near Ellicott's Mound on the St. Marys River, to the confluence of the Flint and Chattahoochee, is received. Considering an examination of the correspondence which has taken place between the Commissioners on this subject necessary before attempting a reply, and no copy having been filed in this Department, I have delayed a few

days, and now avail myself of the earliest day, after having obtained access to that correspondence, to reply to your letter.

You state that you "are advised by Major Allen, the Commissioner on the part of Georgia, that he and Col. Whitner, the Florida Commissioner, differ in opinion as to the true head or source of the St. Marys River." * * * That "the former believes Lake Randolph, and the latter, the point designated by Ellicott and Minor is the true head or source," and you request me to instruct Col. Whitner to unite with Major Allen in surveying the Lake Randolph line.

The commission I regard as having been raised (on the joint application of the parties to the suit) by the Supreme Court of the United States, the States who were parties being authorized simply to "name" each a Commissioner and Surveyor. The duties to be performed by this commission are not, in my judgment, to be determined by the respective States, but are clearly and plainly defined in the interlocutory order, and are as follows: "Whose duty it shall be, first, to run and mark a line from the confluence of the Flint and Chattahoochee Rivers, to the eastern terminus alledged by the complainant to have been determined by Ellicott and Minor, as Commissioners on the part of the United States and Spain, under the treaty of San Lorenzo El Real. Second, if they shall find such terminus not to be the true head or source of the St. Marys River, then to run and mark another line, from the confluence of the Flint and Chattahoochee to the point which they shall ascertain to have been, at the date of the treaty, such true head or source," &c. This order was, at my instance, so modified as to authorize the examinations to precede the surveys, and in the hope of saving the expense of running one of the lines provided for by the Court. The correspondence, I think, shows this, and I presume that none of us considered the modification a withdrawal of the cause from the Supreme Court, and an abandonment of the survey ordered, unless the Commissioners agreed upon a point as the head or source of the St. Marys River. Taking this view of the matter, and regarding the parties named by me as officers of the Court, I gave them no instructions, (except as to the expenses of the commission, &c.,) but furnished them a copy of the interlocutory decree, and of the modification made by consent of parties, with a notification that they were required to discharge the duties therein assigned them. I supposed the object of the Court in raising this commission, was to procure correct surveys, observations, maps, &c., with such additional and authentic information touching the questions at issue, as would aid them in arriving at a correct conclusion. If so, I think it will be conceded, that they did not intend in raising the commission, to place it under the instructions of either of the parties in interest, in reference either to the manner or the extent to which the duties enjoined should be performed. Believing, therefore, that Col. Whitner is the Commissioner of the Supreme Court, and not the agent of the State of Florida, your Excellency will readily perceive that I cannot make the order desired.

I am aware that the action of your Excellency implies a different construction of the interlocutory order, and in differing with you in opinion, I hope you will be assured that I do so most reluctantly, and with entire respect.

Although I have been compelled to decline the order desired, I stand ready to do all in my power to promote an early and satisfactory settlement of this unpleasant controversy, and as I think that the action of your Excellency in suspending the work, or withdrawing the Commission on the part of Georgia, will have an unhappy effect, and lead to no good result, I propose to devote a few moments to that branch of the subject.

Major Allen, the Commissioner on the part of Georgia, whether subject to the instructions of the Court, or those of your Excellency, certainly visited the St. Marys, with authority to consent or agree to the running of a line from the point indicated by Ellicott and Minor to the confluence of the Flint and Chattahoochee Rivers. This was the first duty under the order, except that the work was to precede any examination, by *commencing at the confluence of the Rivers.* This was a duty that he was authorized to omit only on one condition, and that was that the Commissioners, under the consent modification, should agree upon some different point as the true head or source of the River. If Major Allen had authority to unite in running a line from that point, or from any other point, he had authority to refuse to unite in running such line; and when the proposition was made by his co-Commissioner, that was the time to make it known. Now if Maj. Allen, (having the authority,) not only did not refuse, but actually did consent to unite in running the line proposed, and if, under such consent, the guide line has been run, and corrected back about one half of the whole distance, at an expense to the State of Florida of several thousand dollars, I ask your Excellency whether it would be an act of good neighborhood, or even of good faith, to suspend the work, or withdraw the Commissioner on the part of Georgia? If Major Allen is regarded by your Excellency as the agent of the State of Georgia, then his consent and participation should be considered the consent and participation of the State. If, on the other hand, he is regarded as the agent or officer of the Supreme Court, then where will your excellency find authority for withdrawing him?

I understand your Excellency, however, as basing your action upon the refusal of Col. Whitner to unite in running a line from Lake Randolph to the confluence of the Flint and Chattahoochee. The Commissioners have not agreed, as is shown by the correspondence, on Lake Randolph as the head or source of the River, and excepting the line now being run, I think your Excellency will not find, either in the interlocutory order, or the modification by consent, authority conferred on the Commissioners to run any line except one on which they could agree.

But suppose, for the purposes of this argument, we concede that they may run a line from such a point as may be claimed by either

of them. The question then arises, at what stage of the investigation should this consent be made? Suppose Major Allen, on his arrival at the Suwannee Springs, on the 20th of June, had proposed to run a line from Lake Randolph; would your Excellency consider that the time had arrived when it would be proper to decide that question? Or suppose such a proposition submitted at any time during the investigation with which the Commissioners were charged, and prior to its conclusion, would your Excellency consider the time had arrived for a decision? I think not. Florida is willing to await the result of a full and fair examination of all the streams, and I hazard nothing in saying that, should such examination show that Lake Randolph is the true head or source of the St. Marys, Col. Whitner will most cheerfully unite with Major Allen in running that line.

But your Excellency demands a pledge in advance of the examination, and the demand seems to be based upon the supposition that the examinations have been closed, and the Commissioners have fixed upon their points; that they have disagreed, and as Col. Whitner is having his line run, Major Allen must have his. This I respectfully suggest is an erroneous view of the question. An examination of the correspondence between the Commissioners, will, I think, satisfy your Excellency that Col. Whitner simply declined to name any new point in advance of the examination which was to be made of the Okefenokee Swamp, but stated to Major Allen that if he had any point to name, he would consider it. Major Allen named Lake Randolph, to which Col. Whitner dissented, and in doing so, he simply claimed the North instead of the middle prong as the true St. Marys River; but at what point he would fix the head or source, his examinations did not then authorize him to say. Having selected different streams as the main River, there was no prospect of an agreement in reference to its head, and as the weather was oppressively warm, and no competent guides to be had, the further examination was postponed until the line ordered by the Court, from the point designated by Ellicott and Minor, to the confluence of the Flint and Chattahoochee, should be finished, when it was agreed that the further examinations should be made. Col. Whitner will then fix a point, and if Major Allen dissents, each will present to the Court the evidence upon which they hase their opinions.

It is possible that the correspondence may not be filed in the Executive Office of Georgia, as it is not here, and I will therefore make such extracts as I think sufficient to sustain the views which I have presented.

July 13, Major Allen to Col. Whitner:

"I am, of course, to understand you as insisting on the line directed to be run, and marked by the interlocutory order of the Supreme Court of the United States, from the confluence of the Flint and Chattahoochee Rivers to the point said to have been determined by Ellicott and Minor as the head or source of St. Marys River. In

my best judgment, such point does not indicate the true head or source of St. Marys River. Do I understand you correctly as insisting on the line above referred to? If so, any proposition of another point as the true head or source of the St. Marys River, would be unnecessary."

July 13, Colonel Whitner, in reply to Major Allen:

"The extent of the intimation made by me, to which you allude, was intended to be simply that *I* was not prepared, after the examinations which have been made, to propose any new point for the Eastern terminus of the line we are required to have run, and to request, that if you have any new point to propose for such terminus, you would proceed to reduce such proposal to writing, &c. I beg now to say, further, that it is premature to consider the question respecting our further proceedings until this point is disposed of."

July 13, Major Allen proposes Lake Randolph as the Eastern terminus.

July 14, Colonel Whitner disagrees, and says:

"As we have thus failed to agree on another point as the head of St. Marys River, there can be no doubt of our duty, under the decretal order of the Supreme Court, to run a line from the confluence of the Flint and Chattahoochee Rivers to the Eastern terminus alleged by the Complainant to have been determined by Ellicott and Minor, and which I understand to be," &c.

"The order of the Court required this line to be run in any event, and in the first instance, although its modification by the Solicitors of both parties requires the examination to precede the running of any line, and, in case the Commissioners should agree on any other point, might justify us in omitting to run the one above described."

Our examination is still imperfect in one particular. We have traced the chief and almost only sources of that branch of St. Marys River on which Mound B. is placed, to be, in ordinary low water, by various streams issuing from the Okefenokee Swamp, but have not ascertained the distance in or across the swamp that these streams run, or the source to which their waters can be traced. In respect to the waters emptying into the Middle Prong, this has been done at the instance of the Defendant on a former occasion, and I have been content to accept their report as to that fact, and to rely on the statements of others, who are familiar with this point. But in this extraordinary season of heat, &c., it is evidently impracticable to penetrate this swamp now, and spend days and nights in it, without a reckless disregard of health and life. * * And there is not more than sufficient time to run this line and correct it back, and for the Surveyors to have their work prepared to be reported at the time required by the Court, even under the most favorable circumstances of weather and the health of the surveying party. Under these circumstances, I propose that this examination be deferred, and that the Surveyors proceed to run a random or guide line from the points named by Ellicott and Minor," &c. "And I propose this the more

readily, because your own proposition of a new point satisfies me that, should a full examination of the waters of the Okefenokee Swamp convince me that the point established by Ellicott and Minor is too far South, we should not agree to move it further North, and so it would have no practical influence on the further performance of our duties."

Same day, July 14, Major Allen to Col. Whitner:

"I concur with you now, that we do not agree that it becomes our duty to have run and marked, the line indicated by the Supreme Court," &c. "In my judgment this is the proper time to make any examination desired, and we are now, as we have always been, ready to assist and unite in any examinations desired to be made."

July 15, Col. Whitner to Major Allen:

"I am pleased to learn from your's of yesterday, (handed me this morning) that you concur in our duty to have the line run first directed by the Court, as described in each of our last notes. I acknowledge your readiness as now expressed and heretofore uniformerly evinced, to join in making any further examinations I deem important. But I do not concur, that, under existing circumstances, those I alluded to should now be made. The running of the line I consider much the more important duty of the two, and therefore wish not to increase the risk of failing in it. And I will add another great inducement to postpone the further examination of the Okefenokee Swamp, which is, that we know of no competent guides able to serve us to more than a limited extent at present. But by now giving out an intimation that we shall need such guides, and will pay suitably for their services, there are no doubt many amongst those living in the neighborhood, who will take pains to qualify themselves fully against the time when the surveyors return with their corrected line, and thus save a large amount of expense, as well as much time, labor and exposure in making the proposed examinations hereafter. I beg, therefore, respectfully to adhere to my proposal of yesterday."

July 15, Major Allen to Col. Whitner:

"We will cheerfully unite with you in any further examination of the Okefenokee Swamp you may desire to make, and concur in your proposal of guides. You will understand me as not attaching the importance to the examination you seem to do."

I have thus extracted largely from the correspondence, to show that Col. Whitner's election is yet to be made, and depends on an examination to be gone into on the return of the surveying party.—The correspondence shows a good understanding on this subject up to the date of the last letter from which I have extracted—shows Major Allen as agreeing promptly to unite in running the line on which the surveyors are now engaged—shows that he agreed, without reserve or condition, to unite, on the return of the surveyors, in making any further examinations desired—concurred with Col. Whitner in his proposal of guides, and in doing all this, failed even to *intimate a desire in any of his notes*, that a line should now be

run from Lake Randolph to the confluence of the Rivers. The Commissioners may have had conversations in reference to this line, but as they had agreed that their *official* action should be in writing, it was, I think, proper that so important a proposition should have been distinctly submitted. And especially should this have been the case, when it is regarded by your Excellency as of such overshadowing importance, to be made a condition precedent to the closing of the present line.

I expect to place before the Commissioners, before they close their investigations, evidence, which I incline to think, will be regarded as conclusive, that the North Prong was the true St. Mary's River, and that as late as the year 1824 there was no question of the fact by those familiar with the two streams. Should I succeed in offering such testimony, I am sure that your Excellency and Major Allen will both abandon the present demand. The question will then be, the points on the North Prong to be agreed upon as the true head or source of the River, and I have little doubt that such point will be found considerably North of the Mound. With the testimony and examinations thus incomplete, I respectfully submit to your Excellency that your demand to have the line run from Lake Randolph is premature.

Florida and the United States have always regarded the question as closed by the action of the Commissioners, and of the parties in interest, and have been willing so to consider it. Whether it is or is not closed, is the first question to be determined by the Court. If they decide that affirmatively, then there will be no necessity for another line. If it is held to be an open question, the parties can take such additional interlocutory orders as will secure a final decree at the succeeding term of the Court. The report of this Commission is required to be filed on the first Monday in November, and there is no time to run another line, and plat and report this one. The line now being run will be regarded as the Court's line, and will not be at all likely to indicate the opinion of either of the Commissioners. I hope, therefore, that your Excellency will concur with me in opinion, and will review your determination to withdraw the Commissioner on the part of Georgia, and permit the line now being run to be corrected back and closed.

With sentiments of the highest consideration and respect,

I am your Excellency's ob't. servant,

JAMES E. BROOME.

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[E.]

TALLAHASSEE, September 18th, 1854.

To JAMES E. BROOME,
Governor of Florida:

SIR:—Your Excellency having done me the favor of a perusal of

the letter you have just received from Gov. Johnson, which animadverts upon my conduct as a Joint Commissioner, acting under the order of the Supreme Court of the United States, with a request that I would furnish you with such statements and explanations of my conduct as will enable you to make a suitable reply, I lose no time in doing so. My conduct, it seems, is made the ground for his interfering with the proceedings of the Commission, by already directing the Commissioner and Surveyor named by Georgia to suspend further co-operation in running the line now in progress, until your answer is received, and stating the further determination to order them to withdraw altogether, unless, under your instructions, my views of my duties conformed to his opinions. I feel mine to be a serious responsibility, from which I will not shrink, while I sincerely thank your Excellency for this early opportunity to explain and vindicate the grounds on which I have acted.

I may have entered upon the performance of my duties under an erroneous impression, which was, that while the Court ordered that a Commissioner and Surveyor be named by each of the parties, yet, after they were so selected or named, their authority, duty and instructions as to the manner of the commission to be executed, must come from the Court alone. You proposed no conditions or instructions, except as to expense, outfit, compensation, &c. The scope and extent of the powers and duties set forth in the order of Court, were carefully examined and weighed beforehand, as I felt most anxious to understand all that was required of me; and when I met Major Allen, and compared opinions with him touching our duties, my attention was directed solely to the interlocutory order of Court and its subsequent modification by Counsel. Had I supposed that he felt himself bound by any instructions, as to what he was to do or insist on my doing, emanating from any source outside of that order, or dictating the construction we were to give it, I should certainly have insisted on being fully informed on the subject. I considered that we were appointed, not to negotiate, arbitrate or compromise, as the representatives of the two States, but simply to examine into and settle a disputed point, if able to agree, and if not, then to perform a duty prescribed by the Court.

The order recites that it was made at the instance, and with the consent of the Solicitors of each party. The duties it prescribes seem to me easily understood, and are the following:

"1st. They are to run and mark a line from the confluence of the Flint and Chattahochee Rivers to the Eastern terminus alleged by the Complainant to have been established by Ellicott and Minor."

Except to ascertain the latter point, which the Commissioners did without difficulty, this work was entirely artistic, to be executed by the Surveyors, upon such plan as they might suggest and the Commissioners approve.

"2d. If they shall find such terminus not to be the true head or source of the St. Marys River, then to run and mark another line,

from the confluence of the Flint and Chattahoochee to the point which they shall ascertain to have been, at the date of the Treaty, such true head or source."

The language of this clause of the order warrants the construction that "they," to wit, *both* Commissioners, must "*find*," that is to say, must *decide* or *agree* that this terminus is *not* the head or source of the river, before they are authorized or required to run "*another line.*" Either one may so "*find*" or decide, but this would not be a *joint* finding or deciding. Yet, suppose this phrase in the order was intended to affirm a negative instead of a positive proposition, and had said, "if they shall *not* find the said terminus to be the true head," &c., "then to run and mark another line," &c., the question then arises, Where to? and the answer is, "To the point which *they* shall ascertain," &c. Is not this point to be *jointly* ascertained by *both* Commissioners? If not, why use the plural "*they?*" If any line, heretofore or now contended for by Georgia, was also to be run, why not have stated it in so many words? Why appeal to their *judgment*, and require the Commissioners to *investigate* such point, if their duty was simply executory? If they were merely to make examinations, observations, &c., but to be clothed with no right to exercise any discretion—at least if the Commissioner named by Florida was to have none of his own in the matter—the order is certainly expressed in very infelicitous terms.

Gov. Johnson says that "not agreeing that the point determined by Ellicott and Minor, is the true head or source (of St. Marys), it is the duty of the Florida Commissioner to do something more—to unite with the Georgia Commissioner, at least in *search* for the true head or source." I concur fully that this was my duty, and I certainly supposed I had performed it to the full extent that Major Allen proposed or desired. And Gov. J. is referred to the "statement" of this part of our work, agreed on and signed in duplicate by Major Allen and myself, and witnessed by both surveyors, dated 18th July, 1854; which shows that fifteen or sixteen days were devoted to this "search," and the surveys, measurements and examinations, &c. connected with it; and that they were suspended at my instance, as the correspondence shows, only in a direction north of the terminus of Ellicott and Minor, of which Gov. J. has no cause to complain, if your Excellency is satisfied.

These examinations, it is true, did not carry conviction to my mind that the middle or west prong was the main St. Marys River, nor enable me to ascertain "the Southern extremity of Lake Randolph" (as proposed by Major Allen) "to have been, at the date of the Treaty, such true head or source;" and of course I had no hesitation in declining to agree to that as the Eastern terminus of the line we were directed to have run. And I had previously informed Major Allen "that *I* was not prepared, after the examinations which have been made, to propose any new point for the Eastern terminus of the line we are required to have run," &c.

Gov. Johnson further says, "that Col. Whitner believes that the point designated by Ellicott and Minor is the true head or source," and intimates that the line we are having run was begun at my instance, in consequence of my adopting this terminus as the head of St. Marys River, and not because the Court had ordered it to be run. As Major Allen has strenuously endeavored to force me into this position, in a recent part of our correspondence, I must suppose that Gov. J. has made this statement without having seen that part of it which passed before we begun the line. And as I have no hope to make it any clearer that such was not my position, than in the language I then used, I will extract from our letters all that bears on this point, in hopes that I shall be better understood by your Excellency, at any rate.

Major Allen, in his first note of the 13th July, 1854, says:

"I am, of course, to understand you as insisting on the line directed to be run and marked by the interlocutory decree of the Supreme Court of the United States, from the confluence of the Flint and Chattahoochee Rivers to a point said to have been determined by Ellicott and Minor, as the head or source of St. Marys River. In my best judgment, such point does not indicate the true head or source of St. Marys River. Do I understand you correctly as insisting on the line above referred to? If so, any proposition of another point as the true head or source of the St. Marys River would be unnecessary."

He evidently meant, by this term "*insisting*," to inquire if he was to understand me as *adopting* that terminus as the head of the River.

On the same day I replied to this note as follows:

"The extent of the intimation (in mere conversation) made by me, to which you allude, was intended to be simply that *I* was not prepared, after the examinations which have been made, to propose any new point for the Eastern terminus of the line we are required to have run," "and to request that if *you* had any new point to propose for such terminus, you would proceed to reduce such proposal to writing," &c. "I beg now to say, further, that it is premature to consider the question respecting our further proceedings, until this point is disposed of."

Surely, this neither affirms nor implies that I had either adopted or rejected the point said to be established by Ellicott and Minor.

Major Allen in reply, the same day, (July 13th,) says:

"You do not answer my question, as to whether you insist on the line directed to be run and marked," &c., "but renew a request orally made, that if I have any new point for the Eastern terminus of the line required to be run, that I would propose it. With great confidence, I propose as such Eastern terminus the Southern extremity of Lake Randolph or Ocean Pond."

July 14, 1854, I state to Major Allen in reply:

"The new point you propose 'with great confidence' as the head of St. Marys River, I feel equal confidence in declining to agree to, as having, in my judgment, no just claim to be adopted as such," &c. And then proceed as follows: "As we have thus failed to agree on another point, as the head of St. Marys River, there can be no doubt of our duty, under the decretal order of the Supreme Court, to run a line from the confluence of the Flint and Chattahoochee Rivers, to the eastern terminus alledged by the complainant to have been determined by Ellicott and Minor, and which I understand to be," &c.—"The order of Court required this line to be run, in any event, and in the first instance, although its modification by the Solicitors of both parties requires (permits) the examination to precede the running of any line, and in case the Commissioners should agree on any other point, might justify us in omitting to run the one above described.—Our examination is still imperfect in one particular. We have traced the chief and almost only sources of that branch of the St. Marys River on which mount B is placed, to be, in ordinary low water, by various streams issuing from the Okefenokee Swamp, but have not ascertained the distance in or across the Swamp that these streams run, or the source to which their waters can be traced. In respect to the waters emptying into the middle prong, this has been done at the instance of the defendant on a former occasion, and I have been content to accept the report as to that fact, and to rely on the statements of others who are familiar on that point. But in this extraordinary season of heat, &c., it is evidently impracticable to penetrate this swamp now, and spend days and nights in it without a reckless disregard of health and life." "And there is not more than sufficient time to run this line and correct it back, and for the surveyors to have their work prepared to be reported, at the time required by the Court, even under the most favorable circumstances of weather, and the health of the surveying party. Under these circumstances, I propose that this examination be deferred, and that the surveyors proceed to run a random or guide line from the point named by Ellicott and Minor;" "and I propose this the more readily because your own proposition of a new point satisfies me, that should full examination of the waters of Okefenokee Swamp convince me that the point established by Ellicott and Minor is too far south, we should not agree to move it further north, and so it would have no practical influence on the further performance of our duties."

Surely here is evidence of anything else but the *adoption* on my part of the terminus of Ellicott and Minor, although it shows conclusively that I had no doubt they had properly chosen the north branch as the main stream of St. Marys. How could language make it plainer that I proposed this line to be run, because the *Court ordered* it, and not because *I adopted* it? Major Allen in both of his precious notes, described it as "*the line directed to be run by the decretal order of the Court*," and I felt no doubt that we both were agreed as to the duty of having it run. But to put this beyond all dispute, Major Allen in his next note (14th July) says:

"I concur with you now, that we do not agree, that it becomes our duty to have run and marked the line indicated by the Supreme Court," &c. "In my judgment, this is the proper time to make any examinations desired, and we are now, as we always have been, ready to assist and unite in any examinations desired to be made."

On the 15th of July, I reply to Major Allen:

"I am pleased to learn by yours of yesterday, (handed me this morning,) that you concur in our duty to have the line run first directed by the Court, as described in each of our last notes. I acknowledge your readiness, as now expressed and heretofore uniformly evinced, to join in any further examinations I deem important; but I do not concur that, under existing circumstances, those I alluded to should now be made. The running of the line I consider much the more important duty of the two, and therefore wish not to increase the risks of failing in it. And I will add another great inducement to postpone the further examination of the Okefenokee Swamp, which is that we know of no competent guides, able to serve us to more than a limited extent, at present; but by giving out an intimation that we shall need such guides, and will pay suitably for their services, there are no doubt many amongst those living in the neighborhood who will take pains to qualify themselves fully, against the time when the Surveyors return with their corrected line, and thus save a large amount of expense, as well as much time, labor, and exposure, in making the proposed examination hereafter. I beg, therefore, respectfully to adhere to my proposal of yesterday."

The same day, Major Allen replied:

"We will cheerfully unite with you in any further examinations of the Okefenokee Swamp you may desire to make, and concur in your proposal of guides. You will understand me in not attaching that importance to the examination you seem to do."

Here the correspondence closed between Major Allen and myself, while at the Eastern terminus. In immediate connection with the foregoing extracts, I will now add one from our official *statement*, drawn up and signed by both Commissioners on the 18th of July, the day before we left the Surveyors, viz:

"Having completed our examinations, as far as was deemed prudent at this time, and ascertained that we could not agree as to the head of St. Marys River, we agreed to have run the line indicated by the Court, from a point two miles North, 45° East from Mound B., to the junction of the Flint and Chattahoochee Rivers."

These extracts contain all that is pertinent to the question under consideration: 1st. Whether *I* had adopted the terminus said to be designated by Ellicott and Minor as being the head of St. Marys; 2d. Whether *I proposed* and Major Allen *concurred* in the duty of running a line from that terminus because *I had adopted it*, or because the Court had ordered it; and I trust that their perusal will clearly show to

your Excellency that I not only carefully abstained from either adopting, or even indicating, a preference for any point, new or old, beyond that of taking the North Branch to be the main River, but also I expressly reserved my decisions as to the point at issue, until further examinations were had North of Mound B. I believed if they resulted in disclosing facts to show that Ellicott and Minor had erred, in choosing a point *too far South* for the true head or source of the St. Marys River, that it was equally the duty of the Commission to lay these facts before the Court. If the Court should be of opinion that the decision of Ellicott and Minor, in this particular, is not as conclusive as if inserted in the treaty of limits, and should determine that the head of St. Marys is still an open question, of course the whole subject will be examined as though nothing had heretofore been done or decided, to the prejudice of either party, so that each may claim all benefit or advantage to result from a fair and full investigation, even at this late day. Spain, the United States and Florida have all along been willing to acquiesce in what was done by Ellicott and Minor in the premises, as binding and valid; yet if Georgia, the other party in interest, not so disposed, succeeds in convincing the Court that their act is invalid, such former acquiescence will not be used to give the defendant any advantage or preference. Hence I considered it as much the duty of the present Commission to carry our investigations to the *North* as to the *South* of the terminus established by the original Commissioners. The order of Court does not instruct us to search for the head or source of St. Marys, only in such direction as would be more favorable to Georgia, and not in any other, which might turn out to be less favorable than the point settled on by Ellicott and Minor.

As we approached the scene of our researches and examinations, we found a story current amongst the present inhabitants of that region, that the North Branch of St. Marys, on which Ellicott and Minor had erected their Upper Mound, (B.,) had no connection with the great Okefenokee Swamp, except by overflow, in times of very high water. And as W. G. Bonner, in his large map of Georgia, had represented the head waters of St. Marys, and the South-Eastern margin of the Swamp, so as to give countenance to such opinion, I proposed that our first labors should be directed to ascertain the truth of the case. This examination proved, to the entire satisfaction of us all, that in an ordinary low stage of water nearly the whole supply of this stream came out of the Okefenokee Swamp, through numerous small runs, or channels, precisely as had been alleged by Ellicott and Minor.

As soon as this point was satisfactorily investigated, I was willing to turn our operations down this branch of the River, to its junction with other streams, not only to ascertain their relative appearances at the points of confluence, but also to elicit from my respected colleague, Major Allen, his construction of that phrase in the treaty of

1795, "*the head of St. Marys River,*" by seeing how far up either of the others that he might adopt, he would propose to ascend in order to reach its "*head.*" For my own part, I felt great hesitation in deciding upon the proper meaning of this term, "*head,*" as applied to a River. The word "*head,*" is rendered "*nacimiento*" in the Spanish version of the treaty, which may be translated *source, origin, birth, inception.* One of the three following definitions or rules must be adopted, in fixing a point for the "head" of a River:

1st. That point "when it ceases to be a River, or considerable stream;"

2d. That point where there ceases to be "a bed or channel, confined within well defined banks;" or

3d. As high up as "rills can be traced, conveying into it the waters of Swamps or Springs, and the surplus of every shower."

Precedents may be found, in works of high authority, that treat of Rivers and their sources, for adopting either rule, particularly of the two last.

A very slight examination was sufficient to convince us both that the South Prong, though longer than either of the others, taken separately, could not be regarded as the main River, at its junction with the others, united in one stream. We therefore next ascended the Middle or West Prong, not only as far up as it had "a bed, or channel, confined within well defined banks," but, at the instance of Major Allen, we continued to trace the Swamps, and Bays, and Ponds which discharged their waters into it, to more than double that distance, into and across Ocean Pond, or Lake Randolph, and Major Allen adopted the "*Southern extremity*" of this Lake as the "true head or source of St. Marys River," and submitted the same for my concurrence.

For reasons which need not now be stated, I had no hesitation in deciding that this fork of the river could not be considered to be the main stream, either now or at the date of the treaty, and that Ellicott and Minor had acted correctly in choosing the north branch of St. Marys as the continuation of the river. Yet, as my colleague had thus clearly indicated his opinion that we were to search for the head of St. Marys, as high up as we found waters "running into it from swamps or springs," or "even furnished by the surplus or overflow of showers," of course I felt then justified and bound to pursue our search into and up the Okefenokee Swamp, as far as we could trace waters emptying from it into the north branch; and if it turned out that such waters were supplied by streams or creeks rising beyond the swamp, that these should also be investigated, and all the facts be fully collected and reported. The reasons for deferring to make this examination then appear in the extracts already furnished from my notes to Major Allen.

The interlocutory order of Court, clearly made it our duty to run the line we have now in progress, without any appeal to the judg-

ment or discretion of the Commissioners at all, and for a very plain and adequate reason, to wit, because Spain, the United States, and Florida, had all maintained that the points or termini to be connected by it, had long ago been established and settled by those empowered by the high contracting parties, and fully competent to settle it. As the modification of this order, prepared by counsel, might be construed to make that doubtful, which was otherwise plain, and to imply that *no line* at all was to be run, not even the first one, unless Major Allen and myself first concurred that the terminus fixed on by Ellicott and Minor was correctly established at the head of St. Marys River, I at once submitted to him that it was our duty to run a line from this point, *because we could agree on no other,* and because the Court had so ordered; and in this he certainly then fully concurred. Had he refused his concurrence at that time, or made it contingent upon my also agreeing to run another line to Lake Randolph, or to any other point that I did not consider to be the head of the river, of course I could not have complained that we did not agree as to our duty, however much I might have regretted it. The work would have stopped there, and we would have come home. Had the slightest intimation been then given, that Major Allen did not consider himself entirely competent to put his own construction upon the duties assigned to us by the Court, or that he would voluntarily abandon the completion of any one of them, after months of labor and expense, or that he anticipated any interruption or interference by the Executive or the Solicitors of Georgia to that end, most assuredly neither the present line would have been begun, nor could I have consented to enter upon any of the duties of the joint commission.

As our random line approached the confluence of Flint and Chattahoochee rivers, Major Allen renewed our correspondence, by informing me that, as instructed by Gov. Johnson to do, he *insisted* on my uniting in running the Lake Randolph line also. I declined to do so, and I now annex copies of that part of our correspondence, which need no comment. It closed with an assurance by him that this line should be run, nevertheless, of which I should receive due notice. And with this understanding, after crossing the random line, and agreeing upon the point of confluence of Flint and Chattahoochee rivers, (which evidently had undergone recent changes from the effects of freshets,) at the date of the treaty, as nearly as we could ascertain, the surveyors commenced their return line on the 31st ult. on a corrected course, to run and mark the same in such manner as we agreed would meet the requirements of the Court. This work has been steadily progressing, and its accuracy has been most satisfactorily shown, (from cross measurements) by a regular convergence to the random or guide line, and I presume it is nearly or quite half done. Its abandonment at such a stage, appears to me most arbitrary and unjustifiable, and I still hope will not be insisted on, when

Gov. Johnson reviews all the circumstances. In any event, I hope to stand acquitted by the Court, and by your Excellency, of being the cause from any neglect to perform my duty.

I have the honor to be, with great respect,

Your Excellency's ob't serv't,

BENJ. F. WHITNER,

Comm'r. of Florida.

Major Allen to Col. Whitner, 17th August, 1854:

"The line now being run, being in a state of considerable forwardness, the Surveyors approaching the junction of the Flint and Chattahoochee, it is important that I definitely understand you in reference to running the line from Lake Randolph, (the true head, in my judgment, of the St. Marys River,) to the junction of the Flint and Chattahoochee Rivers. I now, as heretofore, *insist* that the Lake Randolph line be run, after completing the present line."

"I am instructed by his Excellency Gov. Johnson so to *insist*, which I do with unhesitating confidence in its correctness. I have not and do not doubt our duty in the premises, under the interlocutory order of the Supreme Court of the United States, but if any reasonable doubt existed, our agreement of the 20th June fully covers the point,' &c.

Col. Whitner to Major Allen, same date:

"The random or guide line begun on the 14th ult. will not be completed to the junction of the Flint and Chattahoochee Rivers before the 23d or 24th inst.; and it is not probable that a correct line can be run and marked back to the Eastern terminus sooner than between the 1st and 10th October. The running of this line is simply in obedience to the order of Court, in consequence of our failure to agree on any other point as the Eastern terminus, or head of St. Mary's River.

"You say, 'I now, as heretofore, *insist* that the Lake Randolph line be run, after completing the present line. I am instructed by Gov. Johnson so to *insist*,' &c. This does not appear in our previous correspondence, and is too important a matter to be left to mere conversational discussions. I ask the favor, therefore, of you to state *in writing* the grounds upon which you make it, and of your construction of the decretal order of the Court, as well as of your allusion to something in our agreement of 20th of June. By stating your argument in this way, on a point about which we may differ, I can reply also in writing, without referring to oral discussions, and the views of *both parties can be more fully understood and appreciated.*"

Major Allen to Col. Whitner, 19th August, 1854:

"When you proposed the running of the present line, I cheerfully assented, not doubting that you would likewise unite in running the Lake Randolph line; and it was only afterwards that I learned that you had somewhat determined to dissent. I thought it, therefore, prudent, as I stated to you, to consult Gov. Johnson on the point."

"You desire that I 'shall state in writing the grounds,' &c. Allow me to say that I deem discussion unnecessary; the point is a plain one. The second item of the 'order' provides for the running of a second line, in case *we* do not find the point alleged to have been determined, by Ellicott and Minor, to be the true head or source of St. Marys River. You cannot mistake my reference to the first item of our agreement of 20th June.

"Allow me to repeat my request for a definite answer on the point."

Col. Whitner to Major Allen, 26th August, 1854:

"I have all along supposed that in running the line upon which we are now engaged, we are simply performing a duty imposed upon us by the Court, and that on that point there was no difference of opinion between us. I certainly proposed it in my note of 14th ult., on that ground alone, and cannot conceive how there can be any mistake as to my position."

"The Court ordered this line to be run in the first instance, and if the Commissioners found its Eastern terminus 'not to be the true head or source of St. Marys River,' then 'to run and mark another line to the point which they shall ascertain to have been, at the date of the Treaty, such true head or source.' The modification of this order, made by the Solicitors in the cause, provided that the examinations for the head of the river might precede the running of any line, in order that there need be but one line run, either to the point *they* shall have 'ascertained and determined' to be the true head and source, or to the point said to have been determined as such by Ellicott and Minor. Such was my construction of the powers conferred and duties imposed on us, fully and freely expressed to you in our conversations, when you proposed that I should unite in running another line, just before the random line, now nearly completed, was begun. And as you failed then to insert in any of your notes, the proposition you now make, viz: that I would 'unite in running the Lake Randolph line,' I had a right to suppose that you were satisfied that mine was the correct construction of our powers and duties. After we left the Surveyors on the 19th ult., you said to me, as we rode along, 'I must insist,' or must continue to insist, 'that that line ought also to be run,' and that you 'would consult Gov. Johnson on the subject,' and I replied by re-stating my own views.

"I make this statement in order to show you that I never meant to leave you in any doubt as to my opinion of our duty, and that you do me great injustice, and are yourself wholly mistaken in saying now, 'it was only afterwards that I learned that you had somewhat determined to dissent.'

"In your notes both of the 17th and 18th inst., you say: 'I have

not and do not doubt our duty in the premises, under the interlocutory order; the point is a plain one,' &c.; and this after consulting with Gov. Johnson. Therefore it was that I asked you to state the grounds of your construction of this order, upon which you pressed on me to unite in running this line. I was urged to an immediate decision, or at least to revise a former decision, and I still think I was entitled to expect you to state the grounds on which you rested yours, particularly after you had consulted Gov. Johnson. I wished to obtain all the light on a subject that seemed to you so plain, in order that I might not appear to decide hastily or captiously, but in the careful exercise of my best judgment. In a matter so plain and so clear to you, there ought to be no hesitation in submitting the grounds on which you rest your position, to be fully and fairly examined.

"But as you decline to do this, I am left to rest on my own unaided judgment; and that teaches me that there is no line authorized or required by the Court to be run between any other points than those first named in its order, unless *we* find the Eastern one 'to be *not* at the head or source of St. Marys River.' And now, before going any further, let me remark that *we* have not even decided on that. *You* have, I admit; but *I* have neither affirmed nor denied that fact, and therefore there has been no *joint* decision by *both*, that Ellicott and Minor were wrong. I have never gone further, even in conversation, than to say, that after all the examinations then (or yet) made by us, I was not prepared to name any new point for the Eastern terminus; but as you intimated that you were, I invited you to submit your proposition in writing, &c. You then did so, and I decided against it—in other words, we failed to agree on that as the true head or source of St. Marys River. Thus *we* have as yet neither agreed that the terminus named by Ellicott and Minor is '*not* at the head of St. Marys River,' nor have *we* agreed on any other point that *is*, and to which it is our duty to run 'another line.' I can find no authority, either in the original or modified decretal order, that requires or would justify the running of 'another line' to any point which either one of us, separately, might be inclined to favor. And if there were no graver objection to assenting to your present request, I should be loth to incur an expense of several thousand dollars upon a work which I do not see to be clearly within the scope of my official duties.

"I feel the more relieved in coming to this decision, because if the Court intended that another (or more than one line) shall be run, at the suggestion of either party, it will be easy for them to make the order clear and explicit to that effect; for it now turns out, as I surmised when we began the present one, that there is barely time to finish it, and to make our returns, &c., within the period limited by the Court. My decision, therefore, will cause no delay, that we are

responsible for, having prosecuted our duties assiduously, at the risk of health, and life itself.

"It is scarcely necessary to allude to your reference to our agreement of the 20th June, as supplying a defect in the order of Court. The 'surveys, explorations, examinations,' &c., there spoken of, referred, as you well know, to our search for the head of St. Marys, to precede the running of the line; and of course when, in the last clause of that agreement, we spoke of '*proceeding to run the line*,' it was in the singular number. Not a whisper had then reached me, or my son, that it was contemplated, on your part, that there would be more than one line to be run, nor indeed until our further examinations were about to be suspended. I certainly would not knowingly have stultified myself by such a departure from what I considered the plain directions of the Court as to *running the line*.

I regret that there seems a necessity for making this letter so long, especially as my health is far from being good; but I cannot consent to be placed in a position that I have not voluntarily assumed—one that I have striven so carefully to avoid.

Maj. Allen to Col. Whitner, 29th August, 1854:

"Yours of the 26th, declining to co-operate in running the Lake Randolph line, was handed to me a few moments since. We differ as to facts. I am at a loss to comprehend how you could fail to understand me *all the while* as insisting on the point under consideration, and it was only in respect to your dissent that I consulted Gov. Johnson, believing all the while that on further consideration that you would unite in running the Lake Randolph line. I certainly understood you to dissent, but not in a form to be final and conclusive. Sufficient to my present purpose to say, that we differ as to the purport of conversation referred to. I said "I still *insist* that that line ought also to be run, &c;" also as to any inference you had a right to draw (when the matter was being discussed between us,) from the non-insertion of a proposition of this line in my notes. I did not deem it essential then—if any proposition was necessary of a duty plainly pointed out in the decretal order, as I thought then and think now. And especially do we differ in reference to your position in regard to "the point said to have been determined by Ellicott and Minor." I understood you then (and acted on it,) and I think the correspondence fully sustains the opinion, that you held that the point had been truly determined by Ellicott and Minor. I understood then, and I understand now our agreement of 20th June, to apply to every duty pertaining to this commission. I very much regret to be *compelled* to differ with the entire tone and tenor of your note. Notwithstanding that you will not unite or co-operate in running the Lake Randolph line, that line will be run and marked, of which you shall have notice."

Very respectfully, &c., &c.

[F]

TALLAHASSEE, December 8th, 1854.

His Excellency, JAMES E. BROOME, Governor of Florida.

SIR:—I herewith submit a summary of the expenditures incurred by the Commissioner and Surveyor, named by the State of Florida, to act jointly with those named by the State of Georgia, while executing the duties prescribed by an interlocutory order of the Supreme Court of the United States, in the cause now pending for settling the boundary line between the two States.

When met to commence our joint labors, the commissioners agreed that all expenditures for supplies and hand hire, while operating together, should be equally divided between the two States. This did not embrace what either party had expended or might expend in reaching or leaving the field of operations, in the outfit for transportation, camp equipage, &c., and no separate account was taken of the supplies that either party had on hand.

The aggregate on the part of Florida is $929 31, including a wagon yet on hand. On the part of Georgia, it is $2 017. The items of this expenditure will be submitted to your Excellency, or to any person authorized to audit and examine the same, and will be found on a scale of proper economy.

In regard to compensation for these services, it was merely stipulated by your Excellency that Florida would allow what is usual and proper in such cases.

The Florida Surveyor realized for his services last winter in running and re-marking the boundary between Florida and Alabama, about seven hundred dollars a month, clear of expenses, from the compensation allowed him by the United States. And the Georgia Surveyor has been paid for his services in the present case, the sum of twenty-five hundred dollars.

The Georgia Commissioner has been paid for his services, the sum of two thousand dollars. The great risk and exposure incurred during the season of the year occupied in performing our duties, were doubtless considered by the authorities of Georgia, and will be duly weighed by those of Florida, in fixing our compensation.

Having been providentially delayed in preparing and transmitting to the U. S. Supreme Court my Report, with the necessary maps, field notes, &c., by the Florida Surveyor, later than we had hoped, they were forwarded on in charge of the Attorney General of this State, without taking time to make out manuscript copies. They will, however, be printed under the rules of that court; (probably the originals may be returned to this State,) and I must ask the indulgence of your Excellency until a printed copy is received, to show the exact bearings of our investigations upon the rights involved in this boundary question.

I have previously reported to your Excellency my reasons for declining to accede to the views of the Governor of Georgia in relation to my duties as Commissioner, even at the hazard of his making it a ground for ordering the Commissioner and Surveyor named by that State, to withdraw from further fulfilling their duties under the order of the Court. I will add here an extract of my letter to Maj. Allen, in reply to his, informing me that such order had been received, and close by stating that the corrected line was stopped on the 29th September, by the withdrawal of the Georgia Surveyor.

I am, with great respect,
Your Excellency's obedient servant,
BENJ. F. WHITNER,
Commissioner on Boundary Survey.

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EXTRACT.

B. F. WHITNER, Comm'r., &c., to A. A. ALLEN, Comm'r.

BEL AIR, 25th Sept., 1854.

"*Dear Sir* :—It is to me a matter of surprise and deep regret to learn that Gov. Johnson has interfered at this stage of our proceedings to direct you and the Surveyor chosen by Georgia to suspend further co-operation in running the line which we concurred, on the 14th of July, it was our duty to run, and which is now nearly completed."—"Had you *then* withheld your concurrence, or qualified it by a stipulation that I should agree to run the Lake Randolph line also, I could not have complained of the course now proposed.—Had you taken the position that there was no line at all to be run, unless from a point jointly agreed on by us as the head of St. Mary's, and I could not have convinced you that the Court required the present line to be run, whether we concurred with Ellicott and Minor or not, of course our work would have stopped there, and no line could have been begun as a joint line."—"I had no doubt that you were fully competent to decide for yourself whether it became your duty to unite in running this line; and having decided that it did, every consideration of good faith now requires that it should be completed. Upwards of two months have been devoted to it, and three fourths of the work is done.

"It was agreed that but one compass should be used, one measurement be made, one set of chain bearers and laborers employed, and all at joint expense. The Florida Surveyor, by express agreement with his coadjutor, conducted the most laborious and responsible part of the work, viz: Calculating the course by which the random line was to be run on the arc of a great circle, managing the compass in taking courses and adjusting the magnetic and diurnal variations of the needle, and in calculating all triangulations and offsets, which have been performed by him personally without respite under the most trying weather, and with the most gratifying results as to accuracy. Yet now, without a word of complaint or hint at

any dissatisfaction as to the execution of the work, it is proposed abruptly, and as I think arbitrarily, to prevent its being finished, by order of the Governor of Georgia, unless I consent beforehand to unite in running another line; asking of me, by such '*express consent,*' to cure an admitted defect in the order of Court, by embracing a work which it has neither authorized nor enjoined. Of course Governor Johnson has the power to do this by withholding supplies to carry on the work, and refusing to remunerate for further services. But I do hope and trust that on receipt of Governor Broome's reply and earnest appeal to revise his conclusions, that he will withdraw his recent order and suffer the work to be closed, and that you will use your influence with him to promote so desirable a result.

"As some days will expire before his final determination is known, the Surveyors can employ the time in comparing their field books, notes, calculations, &c., which would have to be done at the end of the line, and must be done up to the point they have reached, should it unfortunately turn out that their joint labors are to be arrested there.

"I shall fulfil the agreement to defray half the expenses of supplies, hand hire, &c., while operating together, but I do so protesting that Georgia should be held responsible for the whole if this work is left unfinished by the interference of the Executive, as well as for the extra expense to be incurred, should the Court order it to be resumed and finished.

"With this line and our further examinations completed, (which will consume all the time that remains to us,) the Court will be furnished with a line ready to be affirmed, should they decide that the terminus was established by Ellicott and Minor in conformity with the treaty, and so obviate further delay, and the expense and necessity of other lines. If they decide that Ellicott and Minor have not done this, and that the eastern terminus is still an open question, then with the result of our examinations, &c. before them, they can order and specify what other line or lines shall be run. This order of proceeding appears so manifestly to the interest of all parties, that I must hope it will be adopted.

"With great respect, &c., &c."

A summary of Expenditures of the Commissioner and Surveyor named in behalf of Florida, under the Order of the Supreme Court of the United States, made in the cause now pending for the settlement of the Boundary between the States of Florida and Georgia, incurred between the 15th June and 29th September, 1854.

Amount paid for separate expenses and supplies, -	$120 59
Amount of separate hires of hands, team and other outfit for the transportation, - - - - - -	305 10
	$425 69

(From which will be deducted the nett proceeds of a wagon, when sold.)

Half of joint camp expenses, adjusted with Georgia Commisioner, 30th August, 1854, - - - - -	$148 65
Half of the same adjusted 29th September, 1854, -	64 50
Half of hand hire while acting jointly on the survey, &c., as adjusted 29 September, 1854, - - -	291 57
	$929 31

14th June, 1854.—Received of Gov. Broome,	$300 00	
23d August, " " " " "	400 00	
31st Oct., " " " " "	200 00	—900 00
		$29 31

Balance over - - - -

[G.]

EXECUTIVE CHAMBER,
TALLAHASSEE, July 8th, 1854.

BENJAMAN F. WHITNER, jr., Esq.,
Barber's P. O., Columbia Co., Florida.

SIR:—Under the first Section of An act approved December 24th, 1850, entitled "An act in relation to the boundary line between the States of Georgia and Florida," I feel authorized to say to you that such compensation as is reasonable and even liberal, will be paid you for your services as a Surveyor, under the interlocutory order of the Supreme Court authorizing the States of Georgia and Florida each to name a Commissioner and Surveyor to run certain lines therein authorized, with a view to the final decision of the question of boundary between the two States. Your services are particularly desirable at this time, and knowing as I do the delays likely to occur from the action of a joint Commission, I am willing that the compensation shall be regulated in reference to the per diem or the daily earnings which you made while running the line between this State and Alabama. Hoping that nothing will occur to prevent you from pursuing the work to its completion,

I remain, yours very truly,
JAMES E. BROOME,
Governor of Florida.

Which was read, and 75 copies of the message and accompanying documents ordered to be printed for the use of the Senate.

On motion, the rule was waived to allow Mr. Eppes, from the Committee on Revision of the Constitution, to make the following report:

A majority of the Committee on Revision of the Constitution, to whom was referred An act of the sixth General Assembly of the State of Florida, entitled An act to alter and amend the Fourteenth and Twenty-Third Clauses of the Third Article, and the Thirteenth and Sixteenth Clauses of the Fifth Article of the Constitution of this State, have had the same under consideration and beg leave to

REPORT:

The amendments proposed by said act, for giving the election of Secretary of State, State Treasurer, Comptroller of Public Accounts, Clerks of the Courts of Chancery, Clerk of the Supreme Court and Attorney General of the State of Florida to the people, recommend themselves with peculiar force to a majority of said Commitee as wise, proper and just; wise as giving to the people the selection of their own officers, proper and just as resolving upon its own proper basis the election of officers principally political in their character, and they therefore recommend their adoption.

Respectfully submitted,
T. J. EPPES,
Chairman Com. Revision Constitution.

Which was read and the bill placed among the Orders of the Day.

Mr. Wynn made the following minority report:

A minority of the Committee on Revision of the Constitution, ask leave to

REPORT:

They consider that it is impossible that the people who are scattered over so large a region of country, as the State of Florida, can make themselves acquainted with the qualifications of persons for Offices which, although of the greatest importance in themselves, are not of sufficient honor or profit to justify a canvass of the State.

The minority would also state that the graver objection they would urge to the passage of the bill, is, that it proposes to alter the Constitution of the State, an article which they regard of too sacred a nature to be altered, or amended, except to correct grievances of serious importance.

W. B. WYNN,
W. L. CRIGLAR.

Which was read.

On motion, the rule was waived, when the following bills were introduced;

By Mr. Brinson, without previous notice:

A bill to be entitled An act to regulate the practice of medicine and to provide for the establishment of a Medical Board in this State.

By Mr. Provence, according to previous notice:

A bill to be entitled An act to authorize Samuel D. Howse of Marion County to assume the management of his estate;

Which bills were placed among the Orders of the Day.

An act of the Sixth General Assembly of the State of Florida, to alter and amend the fourteenth and twenty-third clauses of the third article, and the thirteenth and sixteenth clauses of the fifth article of the Constitution of this State;

Which was read three several times as on its first reading, and ordered for a second reading on to-morrow.

A bill to be entitled An act to regulate the practice of medicine, and to provide for the establishment of a Medical Board in this State;

Was read the first time and ordered for a second reading on to-morrow.

A bill to be entitled An act to authorize Samuel D. Howse of Marion County, to assume the management of his own estate;

Was read the first time and ordered for a second reading on to-morrow.

On motion, the Senate adjourned till 10 o'clock, to-morrow morning.

THURSDAY, December 21, 1854.

The Senate met pursuant to adjournment.

The Rev. Mr. Turner officiated as Chaplain.

A quorum being present the Journal of yesterday was read and approved.

The following Bills, which had passed the Senate, were transmitted to the House of Representativs, viz:

A Bill to be entitled An Act to empower Charles H. Longworth, of Gadsden County, to manage his own estate;

A Bill to be entitled An Act to improve the navigation of the Harbor and Bay of Apalachicola;

A Bill to be entitled An Act to change the time of holding Circuit Court of Calhoun County;

House Bill to be entitled An Act to amend An Act to provide for the payment of Jurors and State Witnesses, approved January 8th, 1848;

House Bill to be entitled An Act to amend An Act incoporating the city of St. Augustine, approved 4th February, 1833, with enclosed amendments.

On motion of Mr. Nicholson, a Bill to be entitled An Act to incorporate the Lagoon and Perdido Canal Company, was taken from the table, and placed among the orders of the day.

Pursuant to previous notice, Mr. Hopkins introduced a Bill to be entitled An Act to abolish the office of State Engineer and Geologist;